

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

PROCTER & GAMBLE COMPANY,	:	
	:	
Plaintiff,	:	
	:	Case No. 1:02cv393
vs.	:	
	:	JUDGE WALTER HERBERT RICE
THE COCA-COLA COMPANY,	:	
	:	
Defendant.	:	

DECISION AND ENTRY SUSTAINING DEFENDANT'S MOTION TO
CLARIFY STATUS OF PLAINTIFF'S MOTION FOR LEAVE TO FILE
SECOND AMENDED COMPLAINT (DOC. #79)

On August 12, 2003, the Plaintiff filed a motion seeking leave of Court to file its Second Amended Complaint. See Doc. #36. On September 4, 2003, Defendant filed a motion, seeking an extension of time in which to file its memorandum in opposition to that motion. See Doc. #41. By Notation Order of September 5, 2003, this Court sustained Plaintiff's request for leave to amend, without noting that the Defendant had requested additional time to respond to the Plaintiff's motion late in the afternoon the previous day. Consequently, the Court subsequently filed an order which gave Defendant until September 18, 2003, in which to file a memorandum in opposition to Plaintiff's request for leave to amend, a request which this Court had previously granted. See Doc. #43. Given that the

Plaintiff had already filed its Second Amended Complaint (Doc. #42), there has been confusion as to the status of the pleading. Therefore, the Defendant filed its Motion to Clarify Status of Plaintiff's Motion for Leave to File Second Amended Complaint (Doc. #79). The Court sustains that motion. Rather than ruling by Notation Order on the question of whether Plaintiff should be permitted to file a Second Amended Complaint to add a claim of willfulness and, thus, make it possible that Defendant would have to disclose confidential legal advice to defend against that claim, the Court will address that question by a written decision addressing the merits of the parties' arguments in support of and in opposition to the Plaintiff's request which are contained in the previously filed memoranda.¹ The Court will also consider the arguments contained in Defendant's Sur-Reply Memorandum (Exhibit A to Doc. #51). As a consequence, the Court will afford Plaintiff the opportunity of filing a brief reply (no more than six pages) to that memorandum. Such a brief reply must be filed no more than 10 calendar days from date.

March 17, 2005

/s/ Walter Herbert Rice

WALTER HERBERT RICE, JUDGE
UNITED STATES DISTRICT COURT

Copies to:

Counsel of Record.

¹Pending that decision, the Court will not strike the Plaintiff's Second Amended Complaint (Doc. #42).